

COMMISSIONER OF POLITICAL PRACTICES

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SECRETARY OF STATE

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44.10.335 DISPOSAL OF SURPLUS CAMPAIGN FUNDS (1) Candidates shall dispose of surplus campaign funds within 120 days of filing the closing campaign report required by 13-37-228, MCA.

(a) The candidate's closing report shall be filed whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign.

(b) No closing report needs to be filed following a primary election campaign if the candidate will advance to the general election.

(2) "Surplus campaign funds" are those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, no further campaign contributions will be received, and no further campaign expenditures will be made.

(3) Surplus campaign funds will be considered to have been "disposed of" on the date payment is made by the candidate or the candidate's committee to a permissible person, entity, or account.

(4) The candidate shall be responsible for obtaining a receipt containing the requisite information from all recipients of any surplus campaign funds. Payment of surplus campaign funds shall be evidenced by a receipt from the recipient containing the following information:

(a) the full name and mailing address of the recipient;

(b) the date the funds were received;

(c) the full name of the candidate from whose campaign the funds were received, and;

(d) the exact amount of funds received.

(5) Those candidates with surplus campaign funds shall file a supplement to the closing campaign report, on a form prescribed by the commissioner, showing the disposition of surplus campaign funds. The report shall be accompanied by copies of all receipts required by (4) of this rule. The supplement shall be filed within 135 days after the closing report is filed.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, and 13-37-402, MCA, ARM 44.10.336, the provisions of this rule, and the rules in this chapter.

(a) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "personal benefit" is defined in 13-37-240(2), MCA. For the purposes of this definition, a candidate's or an eligible elected official's "immediate family" includes any individual related or connected to a candidate or an eligible elected official as specified in 2-2-303(1), MCA.

(b) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "campaign" means any effort to support or oppose the nomination or election of a candidate for public office, or support or oppose passage of a ballot issue.

(c) Surplus campaign funds, including surplus campaign funds deposited in a constituent services account and any interest accrued as provided in 44.10.543 ARM, may only be disbursed as follows:

(i) Return the funds to the contributors, so long as the refund to contributors will not violate the personal benefit or campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM 44.10.336, or the rules in this chapter;

(ii) Donate the funds to any organization or entity, so long as the use of the funds will not violate the personal benefit or campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM 44.10.336, or the rules in this chapter;

(iii) An elected official other than an eligible elected official may transfer the funds to an account to serve a public purpose related to the officeholder's public duties, so long as the funds will not result in personal benefit or a contribution to a campaign-;

(iv) An eligible elected official may transfer the funds to a constituent services account provided for in Title 13, chapter 37, part 4, MCA, and the rules in this chapter.

(7) A candidate or an eligible elected official shall not contribute surplus campaign funds to a political committee, including a leadership political committee maintained by a political officeholder. However, nothing in this section shall be construed as prohibiting the contribution of surplus campaign funds to a political party or a political party committee, so long as the funds are not earmarked for a specific campaign.

(8) Upon a determination that a candidate made a prohibited disposal of surplus campaign funds, the commissioner may employ any enforcement measures within his or her jurisdiction. (History: 13-37-114, MCA; IMP, 13-37-240, MCA; NEW, 1995 MAR p. 2048, Eff. 9/28/95; AMD, 2001 MAR p. 2049, Eff. 10/12/01 AMD, 2008 p. 474, Eff. 9/12/08.)

44.10.336 PERSONAL BENEFIT (1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of all or any portion of surplus campaign funds, including surplus campaign funds deposited in a constituent services account, that benefit a candidate, an eligible elected official, or a member of the a candidate's or an eligible elected official's immediate family, except as specifically authorized by this rule or the rules in this chapter.

(2) Surplus campaign funds or constituent services account funds may be donated to a group of individuals or an organization to which the candidate or an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family belongs or is a member, as long as:

(a) The candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family do not control how the group or organization spends the surplus campaign funds or constituent services account funds received by the group or organization.

(b) The candidate, an eligible elected official, or a member of the candidate's or the eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the surplus campaign funds or constituent services account funds received by the organization; and

(c) The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receive a benefit that is only incidental to their membership or participation within the group or organization. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the public or other members of the group or organization.

(3) Surplus campaign funds or constituent services account funds may be donated to a government entity under ARM 44.10.335(6)(c)(ii), even if the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family is an employee of the government entity or serves on the government entity's policy making or advisory board, as long as:

(a) The candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family does not control how the government entity spends the surplus campaign funds or constituent services account funds received;

(b) The candidate, an eligible elected official, or a member of the candidate's or the eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the government entity to spend the surplus campaign funds or constituent services account funds received; and

(c) The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receives a benefit that is only incidental to their employment by or participation as a board member. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the government entity's other employees or board members. (History: 13-37-114, MCA; IMP, 13-37-240, MCA; NEW, 1996 MAR p. 784, Eff. 3/22/96 AMD, 2008 p. 474, Eff. 9/12/08.)

44.10.337 AGGREGATE CONTRIBUTION LIMITS FOR WRITE-IN CANDIDATES (1) For purposes of the limitations on contributions established in 13-37-216, MCA, and these rules, the term "election" is defined in 13-37-216, MCA, and the term "candidate" is defined in 13-1-101, MCA. Pursuant to 13-10-211, MCA, a write-in candidate must file a declaration of intent. A candidate who is unsuccessful in a contested primary election, but who complies with applicable statutes to qualify as a write-in candidate for the general election, is subject to the aggregate contribution limits for both the primary election and the general election. (History: 13-37-114, MCA; IMP, 13-37-216, MCA; NEW, 1996 MAR p. 784, Eff. 3/22/96.)

44.10.338 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS (1) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from individuals to candidates are as follows:

- (a) a candidate for governor may receive no more than \$630;
- (b) a candidate for other statewide office may receive no more than \$310;
- (c) a candidate for all other public offices may receive no more than \$160.

(2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:

- (a) a candidate for governor may receive no more than \$22,500;
- (b) a candidate for other statewide offices may receive no more than \$8,150;
- (c) a candidate for Public Service Commission may receive no more than \$3,250;
- (d) a candidate for senate may receive no more than \$1,300;
- (e) a candidate for all other public offices may receive no more than \$800.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals. (History: 13-37-216, MCA; IMP, 13-37-218, MCA 15-30-101(8), MCA; NEW, 2008 MAR p. 1034, Eff. 5/23/08.)

Subchapter 5

Campaign Treasurer - Records and Reporting

44.10.501 UNIFORM SYSTEM OF ACCOUNTS (1) Each person required to file reports pursuant to Title 13, chapter 37, MCA, and these rules, shall maintain a system of accounts as prescribed and published in manual form by the commissioner. The manual may be obtained without cost and upon request from the Commissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena, Montana 59620-2401, telephone (406) 444-2942.

(2) The uniform system of accounts provides, on a current basis, the detail and summary information necessary for preparing, directly from the accounting records, the reports required by Title 13, chapter 37, MCA, and these rules. (History: 13-37-114, MCA; IMP, 13-37-117(2), MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; AMD, 1988 MAR p. 595, Eff. 3/25/88; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

Rule 44.10.502 reserved

44.10.503 DEPOSITS AND EXPENDITURES, ONLY BY CAMPAIGN TREASURER, THROUGH DEPOSITORY (1) No contribution received or expenditure made by a candidate or political committee shall be deposited or expended except by the appointed campaign treasurer or duly authorized deputy treasurer through the designated primary or secondary depository.

(2) All funds received by the campaign treasurer shall be deposited as specified in 13-37-207, MCA, except that funds received prior to and on the fifth day before the date of filing of any report shall be deposited and reported on that report.

(3) All expenditures, except expenditures from the petty cash fund, shall be made by check drawn on the designated depository.

(a) Expenditures from the petty cash fund shall be by a receipt voucher designating the date the monies were withdrawn, the exact amount of the withdrawal and by whom the monies were withdrawn, the name of the person or vendor to whom the monies were paid, and the purpose for which the monies were used. The receipt vouchers shall be attached to the cancelled check which provided the monies for the petty cash fund for the period and shall be maintained as a permanent record of the treasurer.

(b) No check shall be drawn payable to the order of cash, except that the withdrawal of monies for the purpose of providing a petty cash fund shall be by check drawn on the primary depository and payable to the order of cash. (History: 13-37-114, MCA; IMP, 13-37-205, 13-37-207, 13-37-215, 13-37-226(6), MCA; NEW, Eff. 1/1/76.)

Rule 44.10.504 reserved

44.10.505 CASH CONTRIBUTION, RECEIPT (1) No candidate or political committee shall receive a cash contribution in excess of \$25 unless the candidate or political committee prepares a receipt. Such receipt shall contain the following information:

(a) The full name and mailing address (occupation and principal place of business, if any) of the contributor.

(b) The date the contribution was received.

(c) The name of the person who received the contribution on behalf of the candidate or political committee.

(d) The exact amount of the contribution.

(2) The receipt is to be kept as a part of the treasurer's records as specified in 13-37-207, MCA. (History: 13-37-114, MCA; IMP, Sec. 13-37-207, MCA; NEW, Eff. 1/1/76.)

Rule 44.10.506 reserved

44.10.507 TRANSFER OF CONTRIBUTION TO CAMPAIGN TREASURER

(1) Any candidate or agent of any candidate or political committee who receives a contribution on behalf of a candidate or political committee shall, before the end of the fifth day, transfer it to the campaign treasurer with full disclosure of the source, as required by 13-37-229, MCA, and ARM 44.10.519(2) and 44.10.505. (History: 13-37-114, MCA; IMP, 13-37-207, 13-37-229, MCA; NEW, Eff. 1/1/76; AMD, 1979 MAR p. 652, Eff. 7/1/79.)

Rules 44.10.508 through 44.10.510 reserved

44.10.511 CONTRIBUTIONS, REPORTING (1) A contribution becomes a contribution on the date it is received; or, in the case of an in-kind contribution, on the date the consideration is received by the candidate or political committee.

(2) A contribution received by check drawn on a joint checking account shall be deemed and reported as a contribution from the person signing the check, unless otherwise specified in writing at the time the contribution is received.

(3) In the case of property held jointly by a candidate and another, a contribution therefrom will be presumed to be a contribution from the candidate so long as the property was owned jointly prior to the time that the candidate became a candidate as defined in 13-1-101(5), MCA.

(4) A contribution shall be reported for the reporting period during which it is received.

(5) For the purposes of 13-37-226(1)(b), (2)(d), and (3)(a), MCA, the report required to be filed within 24 or 48 hours shall be filed as follows:

(a) It shall be delivered within 24 or 48 hours, as appropriate, after the receipt thereof, Saturdays, Sundays and holidays excepted, to the commissioner's office and the appropriate county election administrator; or

(b) It shall be faxed to the commissioner's office and the appropriate county election administrator, provided the original of the report is received by the commissioner and the appropriate election administrator within five days after the fax transmission. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period.

(c) It shall be reported again on the post-election report. (History: 13-37-114, MCA; IMP, Sec. 13-37-226(1)(a) and (2)(a), 13-37-229, MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; AMD, 1977 MAR p. 1245, Eff. 12/25/77; AMD, 1979 MAR p. 652, Eff. 7/1/79; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

Rule 44.10.512 reserved

44.10.513 IN-KIND CONTRIBUTION, REPORTING (1) For the purposes of Title 13, chapter 37, MCA, and these rules, an in-kind contribution shall be reported as follows:

(a) A candidate or political committee shall report an in-kind contribution on the appropriate reporting schedule and, in addition to the reporting requirements specified in ARM 44.10.511, shall identify it as to its nature.

- (i) The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received.
- (b) The value of an in-kind contribution shall be determined as follows:
 - (i) It shall be reported at its fair market value at the time of the contribution; or
 - (ii) It shall be reported at the difference between the fair market value at the time of the contribution and the amount charged the contributee; or
 - (iii) It shall be reported at the actual monetary value or worth at the time of the contribution; or
 - (iv) If due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind contribution so received.
- (c) Fair market value shall be the retail price of such services, property, or rights in the market from which it ordinarily would have been purchased by the contributee at the time of its contribution. (History: 13-37-114, MCA; IMP, 13-37-229(10), MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; AMD, 1977 MAR p. 1246, Eff. 12/25/77.)

Rule 44.10.514 reserved

44.10.515 LOANS AS CONTRIBUTIONS, REPORTING (1) For the purposes of Title 13, chapter 37, MCA, and these rules, a loan shall be reported as follows:

- (a) A candidate or political committee shall report a loan on the appropriate reporting schedule and, in addition to the reporting requirements specified in ARM 44.10.511, shall identify it as to its nature.
- (b) A loan made to a candidate or political committee by a person, other than in the regular course of the lender's business, shall be deemed a contribution by that person.
- (c) A loan made to a candidate or political committee by any person in the regular course of the lender's business shall be deemed a contribution by the obligor on the loan and by any other person endorsing the loan. (History: Sec. 13-37-114, MCA; IMP, Sec. 13-37-229(5) and (10), MCA; NEW, Eff. 1/1/76.)

Rule 44.10.516 reserved

44.10.517 EXPENDITURE ENCOURAGED TO AVOID CONTRIBUTION, REPORTING (1) If a candidate or political committee, or member thereof, advises, counsels, or otherwise knowingly encourages any person to make an expenditure for the purpose of avoiding direct contributions, or for any other reason, the expenditure shall be considered a contribution by that person to the candidate or political committee encouraging the expenditure.

(2) Such contributions shall be reported pursuant to the provisions of ARM 44.10.513. (History: 3-37-114, MCA; IMP, 13-37-229(10), MCA; NEW, Eff. 1/1/76.)

Rule 44.10.518 reserved

44.10.519 EARMARKED CONTRIBUTION, REPORTING (1) For the purposes of 13-37-217, MCA, and these rules, an "earmarked contribution" is a contribution made with the direction, express or implied, that all or part of it be transferred to or expended on behalf of a specified candidate, ballot issue, or petition for nomination.

(a) A contribution is not earmarked when the initial recipient is:

(i) The candidate for the benefit of whom it is to be expended;

(ii) A political committee which supports a single candidate for the benefit of whom it is to be expended;

(iii) A political committee which supports or opposes a single ballot issue or petition for nomination for the benefit of which it is to be expended; or

(iv) A political committee which supports or opposes more than one candidate and/or issue or petition for nomination and there is no direction, express or implied, that all or part of the contribution will be expended for the benefit of a specified candidate and/or issue or petition for nomination.

(2) An earmarked contribution shall be reported as follows:

(a) The intermediary candidate or political committee receiving an earmarked contribution shall report it pursuant to the provisions of ARM 44.10.511 and, in addition, shall:

(i) Report it as an "earmarked contribution";

(ii) Report the name and address of the candidate or political committee for which the earmarked contribution is ultimately intended.

(2) For purposes of preparing the statement of deposit required by 13-37-207(2), MCA, a record identifying the name of and amount received from each person must be maintained for a purchase of \$35 or more at an event for any candidate or political committee. The proceeds of purchases of less than \$35 may be recorded and deposited in lump sum without identifying the name of the contributor. (History: 13-37-114, MCA; IMP, 13-37-229(7) and (10), MCA; NEW, Eff. 1/1/76; AMD, 1979 MAR p. 653, Eff. 7/1/79; AMD, 1988 MAR p. 595, Eff. 3/25/88; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

Rule 44.10.522 reserved

44.10.523 AGGREGATE CONTRIBUTIONS - DEFINITION, REPORTING

(1) For the purposes of 13-37-229 and 13-37-216, MCA, the term "aggregate contributions" means the total of all of the following contributions made by or received from a person for all elections in a campaign:

- (a) All contributions, as defined in ARM 44.10.321.
- (b) All earmarked contributions, as defined in ARM 44.10.519(1).
- (c) All expenditures encouraged in order to avoid a contribution, as specified in ARM 44.10.517.

(2) For purposes of 13-37-216, MCA, a contribution to a multi-candidate principal campaign committee is considered a contribution to each of the candidates in an amount proportional to the total number of candidates, unless otherwise specified in writing by the contributor at the time the contribution is received. (History: 13-37-114, MCA; IMP, 13-37-216, 13-37-229(2) and (10), MCA; NEW, Eff. 1/1/76; AMD, 1979 MAR p. 652, Eff. 7/1/79.)

Rule 44.10.524 reserved

44.10.525 DEBTS AND OBLIGATIONS OWED TO A CANDIDATE OR POLITICAL COMMITTEE, REPORTING

(1) Pursuant to 13-37-229(7), MCA, each report required by 13-37-226, MCA, shall disclose all debts and obligations owed to a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A reporting candidate or political committee shall report the full name and mailing address (occupation and principal place of business, if any) of each person who owes a debt or obligation to the candidate or political committee at the end of a reporting period, including the amount, date contracted, and nature of each debt and obligation owed by each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported. (History: 13-37-114, MCA; IMP, 13-37-229(6), MCA; NEW, Eff. 1/1/76; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

Rules 44.10.526 through 44.10.530 reserved

44.10.531 EXPENDITURES, REPORTING (1) An expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given.

(2) An expenditure shall be reported on the date and for the reporting period during which it is made.

(3) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to ARM 44.10.503.

(4) Independent expenditures, as defined in ARM 44.10.323, shall be reported in accordance with the procedures for reporting other expenditures. In addition, a person making an independent expenditure shall report the name of the candidate or committee the independent expenditure was intended to benefit, and the fact that the expenditure was independent. The candidate or political committee benefiting from the independent expenditure does not have to report the expenditure. (History: 13-37-114, MCA; IMP, 13-37-230(7), MCA; NEW, Eff. 1/1/76; AMD, 1977 MAR p. 1247, Eff. 12/25/77; AMD, 1986 MAR p. 128, Eff. 1/31/86; AMD, 1999 MAR p. 2287, Eff. 10/8/99.)

Rule 44.10.532 reserved

44.10.533 IN-KIND EXPENDITURE, REPORTING (1) For the purposes of Title 13, chapter 37, MCA, and these rules, an in-kind expenditure shall be reported as follows:

(a) A candidate or political committee shall report an in-kind expenditure on the appropriate reporting schedule and, in addition to the reporting requirements specified in ARM 44.10.531, shall identify it as to its nature.

(b) The value of an in-kind expenditure shall be determined as follows:

(i) It shall be reported at its fair market value at the time of the expenditure; or
(ii) It shall be reported at the difference between the fair market value at the time of the expenditure and the amount charged the expendee; or

(iii) It shall be reported at the actual monetary value or worth at the time of the expenditure; or

(iv) If due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind expenditure as made.

(c) Fair market value shall be the retail price of such services, property, or rights in the market from which it ordinarily would have been purchased by the expendee at the time of its expenditure. (History: Sec. 13-37-114, MCA; IMP, Sec. 13-37-230(7), MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76.)

Rule 44.10.534 reserved

44.10.535 DEBTS AND OBLIGATIONS OWED BY A CANDIDATE OR POLITICAL COMMITTEE, REPORTING (1) Pursuant to 13-37-230(6), MCA, each report required by 13-37-226, MCA, shall disclose all debts and obligations owed by a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A reporting candidate or political committee shall report the full name and mailing address (occupation and principal place of business, if any) of each person to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and nature of each debt and obligation owed to each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported. (History: 13-37-114, MCA; IMP, 13-37-230(6), MCA; NEW, Eff. 1/1/76.)

44.10.536 DEFINITIONS For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this chapter:

(1) "Compensation" includes all direct or indirect payments of salaries, fees, wages, and benefits to an individual or a person to provide constituent services. The term includes all payments made to an individual or a person to provide constituent services on behalf of an eligible elected official, including but not limited to, payments for overtime, compensatory time, retirement, health insurance, membership fees for social, civic, and professional organizations, life insurance, professional liability insurance, unemployment or worker's compensation insurance, personal use of a vehicle, rental car payments, disability insurance, travel, meal, and lodging reimbursement, and other benefits.

(2) "Constituent" means an individual who resides in, is employed in, provides goods or services in, attends school in, or has an ownership interest in property or a business in the district or geographic area represented by an eligible elected official.

(3) "Constituent services" has the meaning generally defined in 13-37-401(1), MCA, and more specifically defined in ARM 44.10.540.

(4) "Constituent services account" means an account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter.

(5) "Eligible elected official" means an individual elected or appointed to a statewide office, the Public Service Commission, or the Legislature.

(6) "In-kind donation" means the furnishing of services, property, equipment, supplies, rights, or anything of value without charge or at a charge which is less than fair market value to an eligible elected official for the purpose of providing constituent services.

(7) "Leaves public office" means that an eligible elected official ceases to occupy the public office for which a constituent services account has been established. The term does not include an eligible elected official who is re-elected to the same public office.

(8) "Pre-existing account" means an account related to a public official's office that existed before May 14, 2007 (the effective date of 13-37-401 and 13-37-402, MCA). (History: 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW 2008 MAR p. 474, Eff. 9/12/08.)

44.10.537 APPLICABILITY OF RULES (1) All of the rules in this chapter apply to a constituent services account established by an eligible elected official under Title 13, chapter 37, part 4, MCA, and 13-37-240, MCA, on or after May 14, 2007.

(2) Only the personal benefit and campaign contribution prohibitions in 13-37-240 and 13-37-402, MCA, and [NEW RULE IV(1)(b), (1)(d), (1)(f)], ARM 44.10.335, and 44.10.336 apply to:

(a) a pre-existing account in which surplus campaign funds have been deposited;

(b) an account related to an elected official's office if the elected official has been elected to any public office other than the public offices listed in ARM 44.10.538 and surplus campaign funds have been deposited in the account; or

(c) the expenditure of surplus campaign funds by a candidate or an elected official.

(3) The following provisions of Montana law may also apply to the use or expenditure of surplus campaign funds, constituent account funds, or other funds deposited in or expended from accounts related to an elected official's public office:

(a) the Montana Code of Ethics, 2-2-101, et seq., MCA, including the provisions governing the receipt of gifts of substantial value and the receipt of fees or compensation other than the official compensation provided by law;

(b) the provisions of Title 13, chapter 35, part 2, MCA, concerning the improper influence of voters before and after an election and the prohibition against corporate contributions to candidates;

(c) the provisions of Title 13, chapter 37, part 2, MCA; and

(d) the provisions of Title 5, chapter 7, MCA. (History 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 474, Eff. 9/12/08.)

44.10.538 ELIGIBLE ELECTED OFFICIALS (1) An individual elected to any of the following public offices may transfer surplus campaign funds to a constituent services account created under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter:

(a) Governor;

(b) Lieutenant Governor;

(c) Attorney General;

(d) Secretary of State;

(e) State Auditor;

(f) Superintendent of Public Instruction;

(g) Chief Justice or Justice of the Supreme Court;

(h) Clerk of the Supreme Court;

(i) Public Service Commission; or

(j) The Montana House of Representatives or Senate. (History 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 474, Eff. 9/12/08.)

44.10.539 PROHIBITIONS (1) The following prohibitions apply to a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, ARM 44.10.335 and 44.10.336, and the rules in this chapter

(a) An eligible elected official may not establish any other account related to the eligible elected official's public office after May 14, 2007, except for a campaign account.

(b) Only surplus campaign funds as defined in ARM 44.10.335(2) may be deposited in a constituent services account established under Title 13, chapter 37, part 4, MCA, and the rules in this chapter, except for the payment of interest as provided in ARM 44.10.543. An eligible elected official may not:

(i) deposit funds from a pre-existing account or any other account related to the eligible elected official's public office, including funds in a leadership political committee account, into a constituent services account established under Title 13, chapter 37, part 4, MCA;

(ii) solicit or receive cash or anything of monetary value for deposit in a constituent services account or to provide constituent services; or

(iii) solicit or receive an in-kind donation to provide constituent services.

(c) A constituent services account established under Title 13, chapter 37, part 4, MCA, may only be used to provide constituent services.

(d) Constituent services account funds may not be used for personal benefit as specified in 13-37-240 and 13-37-402, MCA, ARM 44.10.335, ARM 44.10.336, and the rules in this chapter. Constituent services account funds may not be used to pay compensation to an eligible elected official or a member of an eligible elected official's immediate family except as expressly provided in the rules in this chapter.

(e) Expenditures cannot be made from a constituent services account if the eligible elected official has an open campaign account for any elective office, including an elective office other than the office currently held. However, constituent services account funds may be used to pay for constituent services provided or expenses incurred to provide constituent services before the date upon which a campaign account was opened if payments for such services or expenses are supported by written documentation as provided in ARM 44.10.542.

(f) Constituent services account funds may not be contributed to another ballot issue or candidate campaign, including the eligible elected official's own future campaign.

(2) Subsections (1)(d) and (1)(f) apply to:

(a) a pre-existing account in which surplus campaign funds have been deposited; or

(b) the expenditure of surplus campaign funds by any elected official described in ARM 44.10.537(2)(b) (History: 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW 2008 MAR p. 474, Eff. 9/12/08.)

44.10.540 AUTHORIZED EXPENDITURES (1) A constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be used to pay for the following expenses incurred to provide constituent services:

(a) communications with constituents or on behalf of constituents, including but not limited to, printing, postage, paper, internet, facsimile, delivery, or other costs incurred to communicate with or on behalf of constituents. Communication costs do not include payment for public advertisements or public announcements of any kind unless such public advertisements or announcements are limited to publicly announcing the date, time, place, and general purpose of a meeting in an eligible elected official's district at which the public will be allowed to participate in a public discussion of matters of interest to an eligible elected official's constituents;

(b) travel, meal, and lodging expenses as provided in (2);

(c) equipment and supplies as provided in (3) and (4);

(d) office expenses related to the lease or purchase of office space as provided in (3) and (4);

(e) utility costs associated with the use of equipment, supplies, and office space to provide constituent services;

(f) compensation paid to an individual, other than an eligible elected official or a member of an eligible elected official's immediate family; and

(g) expenses related to education, workshops, and conference participation that are incurred to represent and serve constituents; and

(h) any other expenses incurred to provide constituent services subject to the requirements and prohibitions of the rules in this chapter.

(2) Constituent services account funds may be used to pay travel, meal, and lodging expenses subject to the following:

(a) An eligible elected official may be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services at the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.

(b) An individual, other than a member of an eligible elected official's immediate family, may be reimbursed for travel, meal, and lodging expenses incurred under a written agreement with an eligible elected official to provide constituent services if such reimbursement does not exceed the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.

(c) A member of an eligible elected official's immediate family may not be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services.

(3) If constituent services account funds are used to purchase office space, equipment, or supplies, the office space, equipment, or supplies purchased with constituent account funds must be used exclusively to provide constituent services. When an eligible elected official leaves public office, any office space, equipment, or unused supplies purchased with constituent account funds must be disbursed as provided in ARM 44.10.335(6)(c).

(4) If constituent services account funds are used to reimburse an eligible elected official or a person, other than a member of an eligible elected official's immediate family, for office space, equipment, or supplies used, in whole or in part, to provide constituent services, all reimbursement payments and the basis for such payments must be documented in writing as provided in ARM 44.10.542. Any reimbursement for office space, equipment, or supplies must be based on the fair market value of the office space, equipment, and supplies used to provide constituent services.

(5) Nothing in this rule authorizes constituent services account funds to be used or expended in violation of the prohibitions in [NEW RULE IV], ARM 44.10.335 and 44.10.336, 13-37-240, MCA, or Title 13, chapter 37, part 4, MCA.

(6) Constituent services account funds may not be used to pay:

(a) compensation to an eligible elected official for time spent or services rendered to provide constituent services, except as expressly provided in the rules in this chapter;

(b) compensation or any other payment to a member of an eligible elected official's immediate family for time spent or services rendered to provide constituent services;

(c) the cost of polls or public opinion surveys designed or intended to determine the attitudes and opinions of constituents or the public. However, nothing in this subsection prohibits an eligible elected official from encouraging a constituent to express an opinion about matters of interest to the constituent or matters that may be the subject of official action by the eligible elected official;

(d) the cost of all or any portion of an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(7), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or person or political committee supporting or opposing a candidate or ballot issue;

(e) any direct or indirect travel, lodging, meals, entertainment, or other expenses related to the sponsorship of, attendance at, or participation in an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(7), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or a person or political committee supporting or opposing a candidate or ballot issue;

(f) any direct or indirect expenditure to support or oppose a candidate or ballot issue;

(g) the cost of entertaining constituents or any other individual or person. However, nothing in this subsection prohibits an eligible elected official from using constituent services account funds to pay for food or drink provided at a publicly announced or publicly advertised meeting held for the general purpose of allowing constituents to participate in a public discussion of matters of interest to the constituents or an eligible elected official. The expenditures for food and drink at such a meeting must not be lavish or extravagant; and

(h) travel, meals, or lodging expenses incurred by a constituent or any individual other than an individual who has a written agreement to provide constituent services on behalf of an eligible elected official. (History: 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW 2008 MAR p. 474, Eff. 9/12/08.)

44.10.541 OPENING AN ACCOUNT (1) An eligible elected official may establish a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, by filing a completed constituent services account form provided by the commissioner. The form shall require an eligible elected official to disclose and provide, as a minimum, the following:

- (a) the name and elective office held by the eligible elected official establishing the constituent services account;
- (b) the district or geographic area represented by the eligible elected official;
- (c) the full name, mailing address, and telephone number that appears on the constituent services account;
- (d) the full name and mailing address of any individual other than the eligible elected official who is authorized to make expenditures from the account (the eligible elected official establishing the account must be one of the signatories on the account);
- (e) the full name, mailing address, and telephone number that appears on the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;
- (f) the full name, mailing address, and telephone number of the financial institution at which the constituent services account has been established;
- (g) a copy of the closing report for the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;
- (h) the amount of surplus campaign funds being deposited in the constituent services account;
- (i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's constituent services account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ARM 44.10.335(6)(c)(ii); and
- (j) for each payment of surplus campaign funds to a contributor or entity under the preceding subsection, the date on which the payment was made.

(2) The form must be signed by the eligible elected official and verified as required by 13-37-231(1), MCA. (History: 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW 2008 MAR p. 474, Eff. 9/12/08.)

44.10.542 RECORDS AND REPORTING (1) An eligible elected official who establishes a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly reports with the commissioner's office after an account is opened. Reports must be filed on or before April 10, July 10, October 10, and January 10 in each calendar year until the account is closed as provided in ARM 44.10.544. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued through the end of the calendar quarter on which the quarterly report is due.

(2) Each report must contain, as a minimum, the following:

- (a) the amount of money in the account at the beginning of the reporting period;
- (b) the amount and rate of interest paid on money in the account during the reporting period pursuant to ARM 44.10.543;

(c) the full name, mailing address, occupation, and principal place of business (if any) of each person to whom expenditures have been made during the reporting period, including the amount, date, and general statement describing the constituent services that were the basis for the expenditure, and the total amount of expenditures made to each person; and

(d) the amount of money in the account at the end of the reporting period.

(3) Each report must be signed by the eligible elected official and verified as required by 13-37-231(1), MCA.

(4) An eligible elected official must maintain the following additional written documentation for each expenditure from a constituent services account:

(a) The basis for any fair market value determination to be made under the rules in this chapter.

(b) A written log or other documents identifying the date on which constituent services were provided, the street address and city at which the constituent services were provided, a statement describing the constituent services provided, and the full name and mailing address of at least one constituent on whose behalf the constituent services were provided.

(c) If the expenditure involves payments to a person other than the eligible elected official, a written receipt or invoice from the payee.

(d) If the expenditure involves reimbursement for travel, meal, or lodging expenses, such reimbursement must be based on receipts or other written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, MCA, and rules adopted by the Montana Department of Administration.

(e) If the expenditure involves costs incurred to communicate with constituents, such expenditures must be based on receipts or other written documentation itemizing the basis for the communication expenditure.

(5) An eligible elected official may establish only one constituent services account and no secondary depositories or subaccounts may be established.

(6) All records and reports that must be filed or maintained under the rules in this chapter must be retained by the eligible elected official for a period of four years after the constituent services account is closed. (History: 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW 2008 MAR p. 474, Eff. 9/12/08.)

44.10.543 INTEREST PAID ON ACCOUNTS (1) Interest paid on a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be received and used to provide constituent services if:

(a) the interest is deposited directly into the constituent services account;

(b) the interest is paid by a bank, savings and loan, credit union, brokerage firm, or other financial or investment entity subject to regulation by the state of Montana or an agency of the United States government; and

(c) the interest paid is the entity's prevailing money market, savings, or certificate of deposit rate paid to other investors or depositors with similar interest bearing accounts. (History: 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW 2008 MAR p. 474, Eff. 9/12/08.)

44.10.544 CLOSING AN ACCOUNT – DISBURSEMENT OF SURPLUS

ACCOUNT FUNDS (1) An eligible elected official must close a constituent services account within 120 days after leaving public office as defined in ARM 44.10.536(7). The closing report must be filed on a form to be provided by the commissioner.

(2) A closing report must disclose the full name and mailing address of each contributor or entity receiving all or any portion of the funds in a constituent services account pursuant to ARM 44.10.335(6)(c)(ii). The closing report must also disclose the date on which the payment was made to each contributor or entity. (History 13-37-114, MCA; IMP 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 474, Eff. 9/12/08.)

Subchapter 6

Code of Ethics and Guidelines

44.10.601 OVERLAPPING SALARIES FROM MULTIPLE PUBLIC EMPLOYERS (1) "Public employee" and "public officer" are defined in 2-2-102, MCA. For purposes of this rule, "public employee" does not include an employee in the federal system.

(2) All state public employees, state public officers, and legislators who receive multiple salaries from multiple public employers for overlapping work hours must file a completed multiple public employment disclosure form with the commissioner within 15 business days of the occurrence, contract agreement, or receipt of payment. The multiple public employer disclosure form is available upon request from the commissioner's office.

(3) The multiple public employment disclosure form will contain the following information:

- (a) name, address, and telephone number of the state public employee, state public officer, or legislator;
- (b) name, address, and telephone number of each public employer;
- (c) date(s) of multiple employment;
- (d) title(s) or description(s) of each overlapping position;
- (e) amount(s) paid by each public employer and method(s) of payment.

(4) If multiple employment is ongoing, a multiple public employment disclosure form must be filed with the commissioner annually, prior to December 15 of the current year. If multiple employment is occasional, a multiple public employment disclosure form must be filed on each occasion.

(5) The commissioner will monitor statutory disclosure requirements and notify any state public employee, state public officer, or legislator who is not in compliance with 2-2-104, MCA, within a reasonable period of time. Noncompliant individuals must correct the infraction and submit supporting documentation to the commissioner within 15 days after their receipt of notification. Saturdays, Sundays, and holidays shall be excluded in the calculation of the 15-day period. (History: 13-37-114, MCA; IMP, 2-2-104, MCA; NEW, 1996 MAR p. 789, Eff. 3/22/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

Rule 44.10.602 reserved

44.10.603 DEFINITIONS The following definitions shall apply throughout this chapter:

(1) "Commissioner" means the commissioner of political practices created under 2-15-411 and 13-37-102, MCA.

(2) "Complainant" means any person who files a complaint with the commissioner under Title 2, chapter 2, MCA.

(3) "Ethics code" means the code of ethics, Title 2, chapter 2, part 1, MCA.

(4) "Hearing examiner" means a hearing examiner appointed by the commissioner.

(5) "Respondent" means any person against whom a complaint is filed with the commissioner. (History: 2-2-136, MCA; IMP, 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

44.10.604 COMPLAINT, WHO MAY FILE (1) A complaint may be filed with the commissioner by any person alleging a violation of the ethics code by a state officer, state employee, or a legislator, so long as the alleged violation against a legislator does not pertain to a legislative act. The complaint must:

(a) be filed with the commissioner either by certified mail or delivered in person;

(b) be filed within two years of the date of the alleged violation of the code. A complaint is considered filed on the date it is received by the commissioner. (History: 2-2-136, MCA; IMP, 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96.)

44.10.605 FILING, AMENDING COMPLAINTS (1) Complaints shall be in writing and shall be sworn to before a notary public or other person authorized by law to administer oaths.

(2) A complaint may be amended to cure defects or omissions, verify the original claim, swear or affirm that the charge is true, clarify allegations, or allege new, but related matters.

(3) The commissioner shall promptly notify all parties in writing of any amendments. (History: 2-2-136, MCA; IMP, 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

Rule 44.10.606 reserved

44.10.607 COMPLAINT CONTENTS (1) A complaint shall contain the following:

- (a) the full name, address, and telephone number, if any, of the person making the complaint (complainant);
- (b) the full name, address, and telephone number, if any, of the person against whom the complaint is made (respondent);
- (c) a clear and concise statement of the facts(s), including pertinent dates(s) constituting the alleged violation(s) of the ethics code;
- (d) the specific provision of the ethics code which is alleged to have been violated;
- (e) the verified signature of the complainant swearing or affirming that the charge is true.

(2) A complaint may be filed on a form available on request from the commissioner's office. (History: 2-2-136, MCA; IMP, 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

44.10.608 WITHDRAWAL OF A COMPLAINT (1) Any person who has filed a complaint with the commissioner may request in writing that the complaint be withdrawn. Upon receipt of a written request for withdrawal of the complaint, the commissioner shall dismiss the complaint. (History: 2-2-136, MCA; IMP, 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

Rule 44.10.609 reserved

44.10.610 NOTICE OF FILING A COMPLAINT (1) After a complaint is filed, the commissioner shall promptly furnish the respondent with written notice of the complaint. The notice shall include identification of the person filing the complaint and a copy of the complaint. (History: 2-2-136, MCA; IMP, 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96.)

Rule 44.10.611 reserved

44.10.612 CONFIDENTIALITY (1) The commissioner shall maintain the confidentiality of privacy interests entitled to protection by law. (History: 2-2-136, MCA; IMP, 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

44.10.613 INFORMAL CONTESTED CASE HEARING (1) After the commissioner has asserted jurisdiction over a complaint, a hearing date will be set by the hearing examiner.

(2) The matter shall proceed in accordance with the Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(3) For purposes of these ethics complaint procedures, the commissioner incorporates by reference the attorney general's model rules for contested case hearings, ARM 1.3.212, 1.3.214 (effective 6/12/92), and 1.3.217 (effective 10/12/79). Copies of these model rules are available from the Commissioner of Political Practices, 1205 Eighth Avenue, PO Box 202401, Helena, Montana 59620-2401. (History: 2-2-136, MCA; IMP, 2-2-136, MCA; NEW, 1996 MAR p. 922, Eff. 4/5/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01.)

Rules 44.10.614 through 44.10.620 reserved

44.10.621 BUSINESS DISCLOSURE (1) For purposes of this rule, "individual" means elected officials, candidates for statewide or state district offices (excluding judiciary); department directors, or anyone appointed to fill any of these offices.

(2) For purposes of 2-2-106, MCA, the term "business interest" means any interest in any business, firm, corporation, partnership, or other business or professional entity or trust owned by an individual, the current fair market value of which is \$1000 or more. Ownership of any security, equity, or evidence of indebtedness in any business corporation or other entity is a "business interest."

(3) Not included within the meaning of "business interest" and therefore not reportable under 2-2-106, MCA, are interests of the following nature:

(a) ownership of any personal property held in an individual's name and not held for use or sale in a trade or business or for investment purposes, such as personal vehicles or household furnishings;

(b) cash surrender value of any insurance policy or annuity;

(c) bank deposits, including checking or savings accounts or certificates of deposit, if they are not held for use in a trade or business;

(d) securities issued by any government or political subdivision.

(4) An ownership interest in real property includes a fee, life estate, joint or common tenancy, leasehold, beneficial interest (through a trust), option to purchase, or mineral or royalty interest, if the current fair market value of the interest is \$1000 or more.

(a) It is not necessary to disclose ownership of a personal residence, but each individual is entitled to exclude only one residence.

(b) While valuation of property is not required (it need only be disclosed if its current fair market value exceeds \$1000), a description of both the property and the nature of the interest must be included. This may be a general description sufficient to identify the property without recourse to oral testimony. A street address is sufficient unless it is a rural route. The nature of the property must be described; for example, farm, ranch, vacation home, commercial or residential property, raw land held for investment, etc.

(5) Any individual described in (1) of this rule, is required to file a business disclosure form according to the filing schedules prescribed in 2-2-106, MCA. Business disclosure forms are provided by the Commissioner of Political Practices, PO Box 202401, Helena, MT 59620-2401. (History: 5-7-111, MCA; IMP, 5-7-102(12), MCA; NEW, 1982 MAR p. 1208, Eff. 6/18/82; AMD, 1986 MAR p. 128, Eff. 1/31/86; TRANS & AMD, 1996 MAR p. 2195, Eff. 8/9/96.)